IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

LETTERS PATENT APPEAL NO. 136 OF 2007
IN
WRIT PETITION NO. 2074 OF 2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : J.P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
JUNE 16, 2007.

Heard Shri Harkare, learned counsel for the petitioner – appellant – tenant.

The challenge is to the order of learned Single Judge dated 11.5.2007 dismissing his writ petition in motion after observing that the findings recorded are based on uncontroverted pleadings and also evidence which was tendered by the respondent – plaintiff on affidavit.

Shri Harkare, learned counsel has argued that the present appellant remained ex parte before the trial Court and could not file written statement because the lawyer then engaged by him did not take any interest in the matter. He further contends that in any case the pleadings in relation to bonafide need

as contained in plaint or even in affidavit by the respondent – plaintiff are by themselves insufficient to grant permission.

With the assistance of Shri Harkare, we have perused the said allegations and also both the judgments. The allegations in affidavit of examination-in-chief at Exh. 14 show that the respondent – plaintiff deposed that he purchased the suit property for his own residence and his existing accommodation wherein he is staying with his father, grand father and entire family is grossly insufficient and condition in which the entire family has been living is not proper and befitting the culture of the family. He, therefore, contended that he needed the suit property for his own residence by vacating the tenant.

These allegations or statements on affidavit are sufficient in the eye of law to hold that the property has been purchased by the respondent – plaintiff for his own bonafide need particularly when there is no cross examination to point out anything to the contrary. Nothing to the contrary has been pointed out before the appellate Court, in petition before learned Single Judge or even in

present LPA. The blame which is sought to be put upon the earlier advocate, who has appeared for the petitioner, is again not reflected anywhere earlier. It is, therefore, clear that the story developed is by way of after thought.

Shri Harkare, learned counsel for the appellant has invited our attention to the judgment of the Hon'ble Apex Court in the case of Mohd. Amin vs. Vakil Ahmad, reported at AIR 1952 SC 358, contending that the prayer for holding enquiry under Order 20, Rule 12 of Civil Procedure Code ought to have been expressly made in plaint and in the absence of said prayer, the Court below could not have ordered such an enquiry.

We have perused the reported ruling. It is not in between the landlord and tenant and it appears to be a dispute between the family members. It is, therefore, apparent that in these circumstances, the law applicable here is entirely different. The provisions of Civil Procedure Code, particularly Order 7, Rule 7 enable the Court to grant all such consequential reliefs to which the party is entitled in law. The perusal of plaint shows

that the respondent – plaintiff has asked for vacant possession and he has also made a general prayer requesting the Court to grant him other suitable orders which the Court may deem fit and proper. He had also pointed out to the Court that the tenant was in arrears of rent.

In these circumstances, we are not inclined to entertain in the present Letters Patent Appeal. The same is dismissed. No order as to costs.

JUDGE **JUDGE**

*GS.